PETER WONG v. CUNNAN KALOO NAIR

[O.C.J. (Winslow J.) February 21, 1963]

[Singapore — Suit No. 399 of 1961]

Land Laws — Adverse possession — Parties giving two contradictory versions — Lack of evidence establishing adverse possession — No evidence of age of structure erected — Limitation Ordinance, 1959, s.9.

The plaintiff claimed vacant possession of a portion of land on which the building known as No. 73-D Oxley Rise, Singapore stood. The plaintiff also claimed damages for trespass, demolition of the said building and costs. The defendant in his defence stated that he was in uninterrupted occupation of the land from 1932 to 1959 and as such he was entitled to adverse possession of the said land.

Held: in view of the flatly contradictory nature of the evidence of the parties and in the absence of evidence to establish adverse possession or as to the age of the structure it was impossible to conclude that the plaintiff was barred by section 9 of the Limitation Ordinance, 1959.

ACTION.

T. C. Tan for the plaintiff.

Denis Lee for the defendant.

Winslow J.: In this action the plaintiff claims vacant possession of a portion of land known as Lot 74-2 Town Subdivision XX in the District of Claymore in the Island of Singapore on which a building known as 73-D Oxley Rise stands. He also claims damages for trespass, demolition of the said building and costs.

The plaintiff claims that he purchased Lot 74-2 Town Subdivision XX at an auction in August 1957 and the conveyance thereof taken on 30th December, 1957. This lot, according to him, covered 4 shop houses known as numbers 147-153 Clemenceau Avenue and no other structures whatsoever. He says that he visited the land before purchase and assured himself that apart from these shop houses the remainder of the lot contained only vacant land. On being asked whether he saw any erection on that portion in Plan 36 included in the agreed bundle of correspondence at enclosure 29 and coloured green, he said that he saw no structure there whatsoever. Early in 1959 he visited the land again in the company of his architect and he noticed an open shed with pillars of timber on the portion marked green. He says that he saw no fence there as such although he did notice some barbed wire. He says that he told the defendant that he was a trespasser and asked him to move out. He saw no gate on this land until after boring operations began at the end of 1959.

It is clear from his evidence therefore that, from his point of view, any adverse possession could only have commenced after his purchase of the lot in question and before his second inspection of the lot in early 1959 when he saw an open shed in the portion marked green. He immediately took steps to protest against this trespass.

A licensed surveyor, Mr. Harding, who surveyed this lot and prepared Plan 36 at AB 29 says that in March 1961 he made a survey of this lot and saw a building with zinc and felting roof and plank walls over an area of approximately 26 feet x 15 feet in the portion marked green on this plan. He says that it was a dilapidated building, not necessarily an old building and that it appeared to have been built of old or scrap materials. In his opinion it was not a true building.

If this evidence is accepted then the plaintiff would be entitled to vacant possession as against the defendant.

In his defence, the defendant claims that he was a tenant of B Oxley Rise which is slightly to the east of the portion marked green on AB 29 from 1931 and that he paid rent to one P. Andy. He says that in 1932 he went into occupation of the land marked green not far away which was then a jungle or bush with trees and plants growing wildly on it which also harboured dangerous snakes. He says that he cleared the bush and put up a shelter there with tin roofing and plank walls in 1932 and housed two cows there. He says that he occupied this shelter without interruption of any kind until the plaintiff arrived at the end of 1959 to conduct boring operations. He gives an account of various improvements which he had made to this shelter and the land in front of it. In 1941 he constructed an air-raid shelter there. It was only in 1959, however, that he obtained a number for this structure, 73-D Oxley Rise when the need to have water and other installations occurred. He says that he had never seen the plaintiff in his life until the end of 1959 and denies that, prior to this, he had ever been regarded by the plaintiff as a trespasser or told to move out. As far as he was concerned the prolific Mr. Nair and his family had, between them, been occupying both B Oxley Rise and 73-D without interruption from 1932.

On this evidence I am asked to hold that the defendant has established adverse possession as against the plaintiff and his predecessors in title for more than the statutory period required to establish his claim. The onus of proving adverse possession is of course on the defendant. I have before me two flatly contradictory stories and I have to decide which one I believe, no witnesses other than the parties themselves having given evidence on the essential facts.

On the one hand the plaintiff, who is a businessman, dealing in motor cars and insurance and also a landed proprietor, claims that the disputed land was vacant in 1957 when he purchased it and his counsel advances the proposition on his behalf that a buyer in his position would naturally inspect the property before purchase and could not have made a mistake as to any encroachment thereon. On the other hand the defendant is adamant that he has been in sole uninterrupted and exclusive occupation of the disputed land since 1932 and that the first time his possession was disputed was towards the end of 1959 and his counsel advances the argument

that the plaintiff could have made a genuine mistake about the boundary of the land which he had purchased in 1957 and overlooked the existence of the erection on the disputed land.

In my opinion, a purchaser of the calibre and business acumen of the plaintiff could not have easily made such a mistake and I am inclined to accept his version that, in August 1957, the disputed land was vacant. I am fortified in this view by the existence of a party wall which stretches all the way alongside one length of the lot in question including that part where the disputed land lies and against which wall the shed has been constructed. It may well be that the defendant, as occupier of the neighbouring premises at B Oxley Rise, may have, from time to time from 1932 onwards, cleared the jungle on this disputed land to drive out snakes and graze his cows thereon, but I am not prepared to believe without further evidence that he had reduced this land to his own effective and exclusive possession until after 1957. It may also well be that he dug an underground air-raid shelter there in 1941. It is well known that the digging of trenches and shelters was undertaken almost on a national basis as part of the war effort during the period immediately before and following the first bombing of Singapore on 8th December, 1941 and, in fact, the authorities encouraged the construction of trenches and shelters on vacant land adjoining buildings. The defendant admits that he was told to build a shelter but he does not say who told him to do so. He further says that he was afraid to occupy B Oxley Rise because of bombing and yet from what I myself saw, on inspection it is only a short distance away from the disputed land. Apart from what the defendant says there is a dearth of evidence as to what happened between the years 1932 and the outbreak of the Japanese war. Nor is there any corroborative rebuttal of the plaintiff's assertion that the land was vacant in August, 1957. In the absence of such evidence or satisfactory evidence as to the age of the structure it is impossible for me to conclude that the plaintiff is barred by section 9 of the Limitation Ordinance, 1959 since the defendant has failed to discharge the onus on him of proving possession adverse to the plaintiff and his predecessors in title.

The plaintiff therefore succeeds in his claim for vacant possession of the disputed land and for an order of demolition of the unauthorised building known as 73-D Oxley Rise. In order not to cause him undue hardship it seems to me possible to allow the defendant some reasonable time within which to move out. I think 6 months would be reasonable before the order for demolition becomes effective.

I assess damages for trespass in the nominal sum of $10 having regard to all the circumstances of this case.

Costs will follow the event.

Judgment for the plaintiff.

Solicitors: *Laycock & Ong; Lee & Lee.*

LEONG AH HONG v. HUP SENG CO. LTD.

[O.C.J. (Suffian J.) February 21, 1963]

[K.L. — Originating Summons No. 40 of 1962]

Company law — Dissatisfaction with administration of the company — Companies Ordinance, 1940, ss.15 and 116(2) — Application for meeting under s.116(2) — Impracticability of holding a meeting of the company.

The applicant, a member of the respondent company and other shareholders were dissatisfied with the administration of the company. They instituted a suit (No. 457 of 1961 reported in [1962] M.L.J. 371) praying for a declaration that a meeting held under section 115 of the Companies Ordinance and the resolution passed at the meeting were valid. While that suit was pending, the applicant in this matter applied to the court stating that since its formation there had only been one statutory meeting of the company that it was undesirable that the members of the company wait indefinitely until an annual general meeting be held and in view of the pending civil suit it would be impossible for the company to convene or conduct a meeting in the usual or proper manner and he therefore asked that the court should exercise its power under section 116(2) and order a meeting of the company to be called.

Held: (1) it was not enough that the applicant satisfy the court as to the impracticability of calling or conducting a meeting;

(2) the impracticability must extend to calling a meeting in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or the Ordinance;

(3) Civil Suit No. 457 of 1961 having been determined on 20th August, 1962, it was no longer impracticable to call a meeting.

Case referred to:—

(1) *In re El Sombrero Ltd.* [1958] 1 Ch. 900.

SUMMONS.

M. W. Maxwell (*Yong Joon Hong* with him) for the applicant.

T. K. Sen for the respondent.

Suffian J.: The facts of this case are as stated in a preliminary written judgment I read on 31st May, 1962, and its background may also be gathered from a perusal of my judgment in Kuala Lumpur Civil Suit No. 457 of 1961, (*Hup Seng Co. Ltd.* v. *Chin Yin & Ors.* [1962] M.L.J. 371).

The applicant, a member of the respondent company, and others like him were dissatisfied with the administration of the company. Desiring to replace the present directors, they requisitioned a meeting under section 115 of the Companies Ordinance, but the directors refused to convene the requisitioned meeting, whereupon the dissatisfied members of the company held a meeting under sub-section (3) of that section on the 9th July, 1961 when they passed certain resolutions including one to dismiss the old directors and elect new ones in their place. The old directors refusing to give effect to these resolutions, the dissatisfied members of the company filed civil suit No. 457 of 1961 praying for a declaration among other things that the resolutions passed on 9th July, 1961 were valid. The applicant in this matter said that since its formation the company had only held the one statutory meeting, it had never held any other